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6 Attorneys for Defendants  
CITY OF OAKLAND, et al.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 DEMETRIUS L. HARVEY,

11 Plaintiff,

12 v.

13 CITY OF OAKLAND, a municipal  
14 Corporation; OAKLAND POLICE  
DEPARTMENT; WAYNE TUCKER, Chief,  
15 Oakland Police Department; DEPUTY  
CHIEF HOWARD JORDAN,  
16 OAKLAND POLICE LIEUTENANT GIER,  
OAKLAND POLICE LIEUTENANT  
17 WHITMAN, OAKLAND POLICE OFFICER  
DOMINIQUE AROTZARENA,  
18 OAKLAND POLICE OFFICER J. MORRIS,  
OAKLAND POLICE OFFICER MUSCHI,  
19 OAKLAND POLICE OFFICER GUTIERREZ,  
In their official and individual capacities,  
20 Does 1 through 50, inclusive.

21 Defendants.

CASE NO. C07-01681

NOTICE OF MOTIONS AND MOTION  
TO DISMISS FIRST AMENDED  
COMPLAINT AND MOTION FOR MORE  
DEFINITE STATEMENT

[F.R.C.P. 12b(6), 12(e)]

Date: September 11, 2007  
Time: 9:30 a.m.  
Dept: Courtroom 11, 19<sup>th</sup> floor

The Honorable Martin J. Jenkins

22  
23  
24 **TO PLAINTIFF IN PRO PER:**

25 **PLEASE TAKE NOTICE that on Tuesday, September 11, 2007, at 9:30 a.m. or**  
26

1 as soon as the matter may be heard in Courtroom 11 of the above captioned Court,  
 2 located at 450 Golden Gate Avenue, in San Francisco, CA, Defendants CITY OF  
 3 OAKLAND, CHIEF WAYNE TUCKER, DEPUTY CHIEF HOWARD JORDAN, OAKLAND  
 4 POLICE LIEUTENANT GIER, OAKLAND POLICE LIEUTENANT WHITMAN, OAKLAND  
 5 POLICE OFFICER DOMINIQUE AROTZARENA, OAKLAND POLICE OFFICER J.  
 6 MORRIS, OAKLAND POLICE OFFICER MUSCHI, OAKLAND POLICE OFFICER  
 7 GUTIERREZ ("City Defendants") will and hereby do move the Court for an order, (1)  
 8 pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing certain causes of action  
 9 in this case for failure to state a claim as a matter of law, and (2) pursuant to Federal Rule  
 10 of Civil Procedure 12(e), directing plaintiff to provide a more definite statement in his  
 11 complaint.  
 12

13  
 14 The motion to dismiss is made on the grounds that as to each of the causes of  
 15 action in plaintiff's complaint, plaintiff has failed to state a claim for which relief can be  
 16 granted. More specifically, the motion is based on the following grounds:

- 17 1. Plaintiff's First Cause of Action Under 42 U.S.C. Section 1983 Fails As A  
 18 Matter of Law.
- 19 2. Plaintiff Improperly Relies on A Single Incident To Make A Monell Claim  
 20 Under 42 U.S. Section 1983 (First Cause of Action).
- 21 3. Claims Based on Detention or Jailing Under A Facially Valid Arrest Warrant  
 22 Have Been Rejected by Federal and California Courts (All Causes of  
 23 Action).
- 24 4. Private Actions for Damages Are Not Permitted Under the California  
 25  
 26

1 Constitution, And Thus The Fifth and Sixth Causes of Action Should Be  
2 Dismissed.

3 5. Plaintiff's State Law Causes Of Action For False Arrest And Imprisonment,  
4 Negligence, and Negligent Infliction of Emotional Distress Fail Against the  
5 City For Failure to Identify A Statutory Enactment.  
6

7 6. Plaintiff Makes No Fact Allegations To Support Claims Broadly Made  
8 Against Several Individual Defendants (All Causes of Action).

9 The motion for more definite statement is made on the grounds that plaintiff has  
10 pleaded all six causes of action against "All Defendants," though plaintiff's allegations of  
11 fact allege no conduct by many of the named individual officers. The first amended  
12 complaint is vague and ambiguous in terms of several individual defendants and as to  
13 several of the causes of action brought against them.  
14

15 These motions are based on the accompanying Memorandum of Points and  
16 Authorities and the files of the Court (including the initial Complaint and initial Motion to  
17 Dismiss) in this case.  
18

19 Dated: August 6, 2007  
20

21 JOHN A. RUSSO, City Attorney  
22 RANDOLPH W. HALL, Assistant City Attorney  
23 RACHEL WAGNER, Supervising Trial Attorney

24 By: s/s  
25 Attorneys for Defendants  
26 CITY OF OAKLAND, et al.

**PROOF OF SERVICE**  
**Harvey vs. City of Oakland**  
**Case No. C07-01681 MJJ**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One City Hall Plaza, 6th Floor, Oakland, California 94612. On date shown below, I served the within documents:

**NOTICE OF MOTIONS AND MOTION TO DISMISS FIRST AMENDED COMPLAINT  
AND MOTION FOR MORE DEFINITE STATEMENT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/Express Mail

**Demetrius L. Harvey**  
**360 So. Helm Avenue**  
**Fresno, CA 93727**  
**Telephone: 559-255-1971**

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct in accordance with 28 U.S.C. § 1746.

Executed on August 6, 2007, at Oakland, California.

s/s \_\_\_\_\_  
Deborah Walther